

# **EXHIBIT 1**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

DAVID GOLDSTINE,

Plaintiff,

v.

FEDEX FREIGHT, INC., a Washington State  
entity; "DOE(S) 1-100", employees of  
FEDEX FREIGHT, INC.; and  
CORPORATION(S) XYZ 1-100,"

Defendants.

Case No.

**COMPLAINT FOR DAMAGES**

COMES NOW the Plaintiff, by and through his attorney of record, Ada K. Wong of  
AKW Law, P.C., in the above-entitled matter and alleges as follows:

**I. PARTIES**

1. Plaintiff David Goldstine is a citizen of the United States and a resident of  
Everett, Washington.

2. Defendant FedEx Freight, Inc. is, and was at all times material hereto, a  
Washington state corporation doing business in Snohomish County, Washington, located at  
6414 Hardeson Road, Everett, Washington 98203. It has employed more than 15 employees

1 at all relevant times herein and is an employer as defined in the Washington Law Against  
2 Discrimination.

3 3. Defendants "Doe(s) 1-100," in doing the things complained of herein, were  
4 acting within the course and scope of their employment by FedEx Freight, Inc.

5 4. Defendants "Corporation(s) XYZ 1-100" are corporations whose identities are  
6 unknown to Plaintiff at this time, but in doing the things complained of herein, were acting  
7 within the course and scope of their relationship with Defendants and/or were entities involved  
8 in causing harm to Plaintiff as alleged herein.

9 5. Each defendant is, and at all times herein mentioned was, an agent of the other  
10 and acting within the course and scope of FedEx Freight, Inc. in causing the harm as alleged  
11 herein.

## 12 II. JURISDICTION AND VENUE

13 6. The acts and omissions alleged herein, and the resulting injuries, occurred in  
14 Snohomish County, Washington. Defendants hired and employed Plaintiff in Snohomish  
15 County, Washington. Thus, the Superior Court for the County of Snohomish, State of  
16 Washington, has jurisdiction and venue over this action.

## 17 III. FACTS

18 7. Plaintiff hereby incorporates by reference all allegations contained in  
19 paragraphs 1 through 6, above.

20 8. In or around February 2015, Plaintiff David Goldstine began working at FedEx  
21 Freight's (hereinafter "FedEx") Everett facility as a Road Driver.

22 9. Plaintiff was a full-time employee earning \$25.83 per hour and \$0.6411 per  
23 mile at the time he was decertified to drive on or around April 11, 2017.

1           10. Plaintiff earned the Bravo Zulu Award in January 2017, and a safety award in  
2 February 2017.

3           11. In order to drive a vehicle for FedEx, drivers must be certified to drive under  
4 Department of Transportation ("DOT") standards, which requires an annual physical  
5 examination indicating the driver is able to drive.

6           12. Plaintiff was recertified by U.S. Healthworks on or around March 9, 2017. The  
7 recertification is in effect for one year.

8           13. On or around April 6, 2017, Plaintiff was dispatched to deliver a damaged trailer  
9 to Portland, Oregon.

10          14. Upon inspection of the trailer, Plaintiff discovered that the door was damaged  
11 in such a way that prevented the door from being closed.

12          15. The trailer door was missing or had misaligned door rollers, and the door cable  
13 was frayed and tangled.

14          16. It was dark and raining at the time, so Plaintiff did not attempt to close the trailer  
15 door because he determined that it would be unsafe for him to do so.

16          17. Shortly before 9:00 p.m., Plaintiff called his supervisor, Aaron Jessen, who  
17 surveyed the scene and attempted to close the door.

18          18. Mr. Jessen was unable to close the broken door and the trailer had to be serviced  
19 by a third-party repair company.

20          19. FedEx policy states that trailers are not supposed to leave the dock with the door  
21 open.

22          20. Supervisor Kenny Kass said it was not his job to close the broken door.  
23

1           21. On or around April 7, 2017, FedEx Supervisor Randy Mott combatively  
2 approached Plaintiff and demanded to know why he did not drive the defective trailer to  
3 Portland.

4           22. Plaintiff explained that he had safety concerns about attempting to close the  
5 door by himself and that Mr. Jessen had attempted to close the door but was unsuccessful.

6           23. Mr. Mott then proclaimed that Plaintiff had failed to do his job.

7           24. Plaintiff explained why he did not close the trailer door, specifically that it was  
8 dark and rainy, he had a flashlight in one hand, he saw that the door was damaged, and he has  
9 limited range of motion in his knee that makes it difficult to climb into the trailer.

10          25. Mr. Mott responded by saying: "If you have any limitation that prevents you  
11 from closing that door, we need to note that and you may need to find another job."

12          26. Plaintiff attempted to remove himself from the increasingly hostile discussion,  
13 but Mr. Mott physically blocked his access to the office to clock in. Mr. Mott finally allowed  
14 Mr. Goldstine to pass, but he continued to state that Mr. Goldstine would "need to find another  
15 job."

16          27. On or around April 11, 2017, through David Appesland, Plaintiff discovered  
17 that Defendant FedEx decertified him, and he was not allowed to drive FedEx vehicles.

18          28. On or around April 11, 2017, when Plaintiff reported to work, Service Center  
19 Manager David Appesland told Plaintiff that he needed to submit a written statement about the  
20 events that transpired on April 6 and 7, 2017.

21          29. Mr. Appesland told Plaintiff that he needed to submit the written  
22 statement/report or else he would be "parked". Being parked as a driver meant that Plaintiff  
23 was unable to drive the trucks.

1           30. Plaintiff asked if he could write his statement at home. Mr. Appesland replied  
2 “yes,” but indicated that if he did not have the statement when Plaintiff reported back to work,  
3 he would be “parked”.

4           31. At approximately 1:48 p.m., Tammy Rogers, FedEx Safety Assistant, e-mailed  
5 Mr. Appesland, along with Ms. Tayman, Mr. Cass, Mr. Carlson, and approximately 15 other  
6 FedEx employees that a DOT physical was required for Plaintiff and that his “driver number  
7 will be deactivated immediately.”

8           32. At approximately 3:00 p.m., Mr. Appesland informed Plaintiff via telephone  
9 that he was decertified until he was recertified by a doctor.

10          33. Upon receiving this information, Plaintiff drove to work to get a form from Mr.  
11 Appesland that would allow him to get another DOT physical.

12          34. On or around April 13, 2017, Plaintiff went through a medical re-certification  
13 through U.S. Healthworks. The physician who assessed him was aware of Plaintiff’s range of  
14 motion limitations resulting from his total knee replacement in 2010.

15          35. The physician re-certified him.

16          36. On or around April 14, 2017, FedEx rejected Plaintiff’s re-certification,  
17 claiming that because Plaintiff did not disclose him being “disabled” to the physician, the  
18 physician was unable to note and acknowledge that his certification was informed and  
19 acceptable for purposes of the Federal Motor Carrier Safety Act (“FMCSA”).

20          37. The FMCSA DOT form does not require individuals going through a medical  
21 certification to list a disability. Plaintiff did, however, list information about his total knee  
22 replacement.

23

1           38. On or around April 18, 2017, Plaintiff attended a meeting with Ms. Tayman  
2 where she abusively shouted at him that he has a “disqualifying condition” that makes it illegal  
3 for him to drive, and that “she is not here to play games,” and accused him of “hiding” his  
4 disability.

5           39. During this same meeting, Ms. Tayman informed him that the April 6, 2017  
6 door incident was becoming a significant issue. Plaintiff reminded Ms. Tayman that when he  
7 was hired, he self-identified as a disabled person, but he emphasized that he has no issues  
8 performing the essential functions of his job.

9           40. That same day at approximately 11:00 a.m., Plaintiff e-mailed photos of the  
10 trailer in question to Mr. Kass and Ted Carlson, Safety Supervisor in Portland.

11           41. Ms. Tayman insisted that FedEx had a right to know about Plaintiff’s disability  
12 despite Plaintiff never asking for an accommodation and that his supposed willful withholding  
13 of information about his disability was the reason for his decertification on April 11, 2017.

14           42. Further, Ms. Tayman demanded that Plaintiff go through yet another medical  
15 re-certification, provide additional information regarding his limitations, and inform the  
16 physician about what had happened with the trailer door.

17           43. Ms. Tayman then proceeded to threaten Plaintiff by stating that she could have  
18 him prosecuted for falsifying information to the physician and that she could seek a civil  
19 penalty against him.

20           44. On or around April 20, 2017, Plaintiff returned to U.S. Healthworks to complete  
21 another physical evaluation, but the evaluation was not performed because Dr. Valarie Smith  
22 said it was a complete waste of her time and resources as the results from the prior physical on  
23 April 13, 2017 were valid for one year.

1           45.     Plaintiff confirmed this information with U.S. Healthworks' management.

2           46.     On April 24, 2017, Plaintiff sent numerous e-mails to Ms. Tayman asking her  
3 to divulge the alleged "disqualifying condition" she claims he has that makes it illegal for him  
4 to drive. She did not respond.

5           47.     On or around April 25, 2017, Plaintiff spoke with Ms. Tayman and expressed  
6 his frustration that his medical disqualification was due to his range of motion limitations. Ms.  
7 Tayman yet again told him he had to tell the physicians about his disability in order to obtain  
8 a certification that was legally compliant.

9           48.     On or around May 3, 2017, Ms. Tayman sent Plaintiff an e-mail misstating  
10 several facts about his disability, such as: Plaintiff telling multiple employees that he was  
11 unable to perform job duties related to closing a trailer door because, "quote I am disabled."

12           49.     Plaintiff did not make these statements as Ms. Tayman claimed.

13           50.     On or around May 31, 2017, Ms. Tayman sent Plaintiff an e-mail outlining  
14 Defendant FedEx's version of the events, which included more fabrications.

15           51.     After receiving the e-mail and reviewing its inaccuracies, Plaintiff did not  
16 obtain another recertification from U.S. Healthwork as he had already been certified by a U.S.  
17 Healthworks physician and Dr. Smith refused to re-examine him.

18           52.     On or around June 15, 2017, Plaintiff submitted a physical evaluation to FedEx.

19           53.     Plaintiff was able and ready to perform the essential functions of his job at all  
20 times at FedEx.

21           54.     Plaintiff was not allowed to continue working at FedEx.

22     //

23     //



1 **IV. FIRST CAUSE OF ACTION**

2 **(WLAD – DISABILITY DISCRIMINATION)**

3 55. Plaintiff hereby incorporates by reference all allegations contained in  
4 paragraphs 1 through 54, above.

5 56. Defendants treated Plaintiff differently in the terms and conditions of his  
6 employment on the basis of the presence of any sensory, mental, or physical disability and/or  
7 because of Plaintiff's actual or perceived disabilities in violation of the Washington Law  
8 Against Discrimination ("WLAD"), RCW 49.60, *et seq.*

9 57. As a direct and proximate cause of Defendants' deliberate actions, Plaintiff  
10 incurred non-economic and economic damages, including but not limited to lost wages, future  
11 wage loss, other benefits, loss of earning capacity, mental distress, physical damages,  
12 emotional distress, and pain and suffering, in an amount to be proven at trial.

13 58. All Defendants are liable for said conduct under both vicarious liability and on  
14 an agency relationship. The conduct of Defendants, and each of them, was done in reckless  
15 and conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain  
16 and suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is  
17 mandated against each Defendant.

18 **SECOND CAUSE OF ACTION**

19 **(WRONGFUL TERMINATION / CONSTRUCTIVE DISCHARGE)**

20 59. Plaintiff hereby incorporates by reference all allegations contained in  
21 paragraphs 1 through 58, above.

22 60. Defendants' deliberate acts made Plaintiff's working conditions so intolerable  
23 that any reasonable person would have felt compelled to resign.



1 DATED JUL 12 2018

2 AKW LAW, P.C.

3 

4 Ada K. Wong, WSBA #45936  
5 Attorney for Plaintiff  
6 6100 219<sup>th</sup> St. SW, Suite 480  
7 Mountlake Terrace, WA 98043  
8 Tel.: (206) 259-1259  
9 Fax: (855) 925-9529  
10 E-mail: [ada@akw-law.com](mailto:ada@akw-law.com)